



DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB53

Bank Secrecy Act Regulations – Reports of Foreign Financial Accounts Civil Penalties

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is amending the Bank Secrecy Act civil penalty regulations relating to the requirements for reporting foreign financial accounts and for reporting transactions with foreign financial agencies. The amendments remove civil penalty language, which was made obsolete with the enactment of the American Jobs Creation Act of 2004. The American Jobs Creation Act of 2004 revised the manner for computing the penalty, including providing a greater maximum penalty for willful violations than was previously authorized.

DATES: *Effective Date:* The final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at <https://fincen.gov/contact>.

SUPPLEMENTARY INFORMATION:

I. Background

The purposes of the Bank Secrecy Act (BSA), Titles I and II of Pub. L. 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5336, include, among other things, requiring certain reports or records that are highly useful in criminal, tax, or regulatory investigations. The regulations implementing

the BSA appear at 31 CFR chapter X. The Secretary’s authority to administer the BSA has been delegated to the Director of FinCEN.¹

Pursuant to 31 U.S.C. 5314, the Secretary is authorized to require any “resident or citizen of the United States or a person in, and doing business in, the United States, to . . . keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.” The regulations implementing 31 U.S.C. 5314 appear at 31 CFR 1010.350, 1010.360, and 1010.420. Section 1010.350 sets forth the requirements for filing a Foreign Bank Account Report (FBAR), which generally require each U.S. person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country to report such relationship for each year in which such relationship exists. Section 1010.420 outlines the recordkeeping requirements associated with foreign financial accounts required to be reported under Section 1010.350. Section 1010.360, commonly referred to as the report of foreign financial agency transactions, provides that FinCEN may promulgate regulations requiring specified financial institutions to file reports of certain transactions with designated foreign financial agencies.

II. Civil Monetary Penalty

Section 5321 of Title 31 of the U.S. Code describes civil monetary penalties for violations of the BSA. In October 1986, Congress amended 31 U.S.C. 5321 to add a provision—31 U.S.C. 5321(a)(5)—authorizing a civil monetary penalty for willful violations of section 5314. (Pub. L. 99-570, section 1357(c), October 26, 1986) (“the Anti-Drug Abuse Act of 1986” or the “1986 Act”). The terms of the 1986 amendment were incorporated into the BSA implementing regulations at 31 CFR 1010.820(g).²

¹ See Treasury Order 180–01 (Jan. 14, 2020).

² 52 FR 11436, April 8, 1987.

The American Jobs Creation Act of 2004 amended 31 U.S.C. 5321(a)(5). The amendments revised the manner in which the penalty is calculated, including an increase to the maximum amount that could be assessed for willful violations of section 5314.

III. Section by Section Analysis

Section 821 of the American Jobs Creation Act of 2004 is self-executing, and the penalty provisions apply to violations occurring after the date of its enactment. For those reasons, the provisions in 31 CFR 1010.820(g) are obsolete and superseded by statute. FinCEN is therefore rescinding 31 CFR 1010.820(g). The remaining paragraphs (h) and (i) in § 1010.820 are redesignated as paragraphs (g) and (h).

IV. Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The final rule rescinds civil penalty regulations at 31 CFR 1010.820(g)(1) and (2) because they have been rendered obsolete with the 2004 amendments to 31 U.S.C. 5321(a)(5). The agency has therefore determined that publishing a notice of proposed rulemaking and providing opportunity for public comment is unnecessary. This amendment to the regulations merely conforms the regulations to the current statute.

Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. FinCEN finds that there is good cause for shortened notice since 31 CFR 1010.820(g) is obsolete and the revisions made by this final rule are non-substantive and technical. This final rule takes effect on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. As noted above, FinCEN has determined that it is unnecessary to publish a notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

VI. Executive Order 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. FinCEN has determined that Executive Orders 13563 and 12866 do not apply to this final rulemaking.

VII. Paperwork Reduction Act (PRA) Notices

There is no collection of information requirement in this final rule.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, 12 U.S.C. 1532, Pub L. 104-4 (March 22, 1995) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, Section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that no portion of this final rule will result in expenditures by State, local, and

tribal governments, or by the private sector, of \$100 million or more in any one year.

Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR part 1010 is amended as follows:

PART 1010—GENERAL PROVISIONS

1. The authority citation for part 1010 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1960; 31 U.S.C. 5311-5314 and 5316-5336; title III, sec. 314, Pub. L. 107-56, 115 Stat. 307; sec. 701, Pub. L. 114-74, 129 Stat. 599.

§1010.820 [Amended]

2. Section 1010.820 is amended as follows:

- a. Remove paragraph (g); and
- b. Redesignate paragraphs (h) and (i) as paragraphs (g) and (h).

Himamauli Das,
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Financial Crimes Enforcement Network.

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